



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL

DIVISION OF STATE COUNSEL
LITIGATION BUREAU

June 7, 2024

VIA ECF

Honorable Vera M. Scanlon
United States District Court
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Steele-Warrick v. Microgenics Corp. et al.*, No. 19-cv-6558 (FB) (VMS)

Dear Judge Scanlon,

I write on behalf of defendants Anthony Annucci and James O’Gorman in response to the letter of Rob Rickner, dated June 4, 2024, concerning the upcoming expert deposition of Dr. Robert Swotinsky noticed in the above-captioned matter (ECF No. 269). As the Court is aware, Mr. Rickner represents the plaintiff in *Wills v. Microgenics Corp.*, No. 20-cv-4432 (BMC) (VMS) but does not represent any party in this action.¹

Following Mr. Rickner’s letter, counsel for plaintiffs in this action confirmed that they will be producing Dr. Swotinsky for his duly-noticed deposition on June 13, as had been agreed upon by all parties in *Steele-Warrick*. Yesterday, I confirmed with Mr. Rickner that he is not seeking any relief as to defendants Annucci and O’Gorman in connection with Dr. Swotinsky’s deposition. And defendants Annucci and O’Gorman do not object to Mr. Rickner’s attendance at that deposition. Accordingly, there is no dispute between defendants Annucci and O’Gorman and plaintiffs in this action (or the plaintiff in *Wills*) that necessitates the Court’s intervention.

Respectfully submitted,

/s/

Linda Fang
Special Litigation Counsel

¹ This Office also represents an individual defendant, Sheila Woodberry (not a witness, as stated in Mr. Rickner’s letter), in the *Wills* action. The claims against Ms. Woodberry in *Wills* are wholly unrelated to drug testing. Ms. Woodberry’s summary judgment motion in *Wills* is fully briefed and has been pending before Judge Cogan since February 2024.

As indicated in Mr. Rickner’s letter, this Office was not provided notice of Dr. Swotinsky’s May 2024 deposition in *Wills* until the evening before the deposition. Because expert discovery about drug testing did not bear on the claims asserted against Ms. Woodberry in *Wills*, I did not object to the deposition going forward despite the lack of notice, in order to accommodate the schedule agreed upon by the other parties. I was only able to attend a portion of that deposition due to preexisting professional conflicts, and did so in my capacity as counsel for Ms. Woodberry in *Wills*, as was reflected in the deposition record.